IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5962 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ADODIYA KUSUMBEN RAMESHBHAI

Versus

DIST MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR BHATT, APP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu came to be detained by virtue of an order passed by the District Magistrate, Bhavnagar, dated the 21st May, 2000, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short). The petitioner-detenu is labelled as a 'Bootlegger' as

defined under the PASA Act and a satisfaction is recorded by the detaining authority in the grounds of detention that his activites are deterimental to public health and public order. For arriving at this subjective satisfaction, the detaining authority took into coinsideration six offences registered against the detenu under the Bombay Prohibition Act. The authority also took into consideration statements of three anonymous witnesses dated May 6, 2000 in respect of three different incidents for which no offence is registered. The detaining authority exercising powers under Section 9(2) of the PASA Act, did not disclose the identity of these witnesses, after recording a satisfaction that the witnesses suffer from a genuine apprehension from the petitioner-detenu in respect of their person and property. After considering possibility of resorting to less drastic remedies, the detaining authority came to a conclusion that the petitioner is requied to be detained under the provisions of the PASA Act in order to immediately prevent him from pursuing his illegal and anti-social activities.

2. The petitioner has raised many contentions in the petition to assail the grounds of detention. An affidavit in reply is filed by the detaining authority meeting with the contentions raised in the petition.

3. Ms. Kachhavah, learned advocate appearing for the petitioner, has raised only one contention. She submitted that the order of detention was approved by the Government on May 28, 2000. A representation was made on behalf of the detenu to the detaining authority and the detaining authority has rejected the said representation on June 1, 2000. Ms. Kachhavah submitted that the detaining authority could not have rejected the representation. The authority was required to forward the same to the Government for its consideration as the detention was already approved by the Government on May 28, 2000 and the detaining authority had become functuous officio. In support of her argument, she has placed reliance on the decisions of this Court in the case of Urmilaben Navnitlal Gandhi v. Commissioner of Police, 1994(2) GLH (U.J.) 10 and Salim Pothiyu Rehmanbhai Belia v. District Magistrate and Ors, 1994(2) GLH (U.J) 11.

4. Learned Assistant Government Pleader, Mr. Bhatt, has opposed this petition.

5. Ms. Kachhavah has placed on record a xerox copy of order of the State Government approving the detention. It is dated May 28,. 2000 and bears No.V-3/PASA/

14/2000/316. She has also placed on record the original communication received by the detenu from the District Magistrate, Bhavnagar (detaining authority), which is dated June 1, 2000 and bearing No.DM-1-PASA Case-30-2000. In that communication, the detenu was informed that her representation through her advocate dated the 29th May, 2000 is rejected.

6. In light of this factual background, if the legal position is considered, the detaining authority becomes functuous officio after the order of detention is approved by the Government and the representation, thereafter, cannot be decided by him. All that he is required to do is to forward the same to the Government for its consideration. In the instant case, the detaining authority has rejected the representation after having become functuous officio. This can be said to have infringed the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution. The continued detention of the detenu, therefore, would stand vitiated. The petition deserves to be allowed on this ground and the same is, therefore, allowed.

7. In the result, the petition is allowed. The impugned order of detention dated the 21st May, 2000, passed against the detenu is hereby quashed and set aside. The detenu-Adodiya Kusumben Rameshbhai is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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